



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chair
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member
David Anderson, Assoc. Member

DECISION – BOARD OF APPEALS CASE NO. 20-32

APPLICANT:

Lisa Tierney

SITE:

524 Elm Road, Walpole, MA 02081

Assessor's Lot No. 24-91

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TOWN OF WALPOLE

The grant of a VARIANCE under Section 9.4.A. of the Zoning Bylaw to allow the construction of an attached 20' x 32' garage to have a 5.8 ft. side yard setback, where a twenty-five (25) ft. side yard setback is required in Zoning District R.

On October 7, 2020 a Public Hearing was opened and continued to 11/18/20 via Zoom Meeting, the Board heard testimony on both nights, for the purpose of receiving information and voting upon a decision as to the granting of the Variance requested. The members who were present and voting:

NAMES OF VOTING MEMBERS

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Member

VOTE OF THE BOARD:

A motion was made by Murphy and seconded by Coffey, that the Board grant the applicant a Variance under Section 9.4.A. of the Zoning Bylaw to allow the construction of an attached 20' x 32' garage to have a 5.8 ft. side yard setback, where a twenty-five (25) ft. side yard setback is required in Zoning District R. The vote was 1 - 4 - 0, roll call vote: Lee-opposed; Murphy-opposed; Fitzgerald-aye; Coffey-opposed; Delaney-opposed, therefore, the Variance is hereby denied.

REASONS FOR DECISION

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship to the appellant or petitioner.*

524 Elm Street is a 16,949 square foot narrow rectangular lot with 79.5 feet of frontage and lies within the Rural Zone, which requires 40,000 square feet of land and 200 feet of frontage. The building as erected on the lot is a pre-existing non-conforming structure. The shape of the lot is narrow and long. The narrow shape of the lot specifically affects the existing structure but does not generally affect the zoning district it is located. There is an in-ground swimming pool in the back of the property with a concrete slab around it. The septic system servicing the home is directly behind the home adjacent to the swimming pool. As of right, the proposed garage can be constructed as an accessory building on the back yard of the property or attached to the back of the building. The driveway would be extended to the back of the property along the left side of the house along the property line and would cost substantially more money to construct.

However, the Board was not persuaded that an undue hardship exists, primarily because there is an existing garage on the site that could be used by the applicant. While the applicant alleged specific safety concerns associated with the use of existing garage for purposes of accessing the home by her elderly parents, the Board does not find that this type of safety concern is of the type that may justify a variance (i.e., where the safety concern is created at an off-site location which necessitates a deviation from otherwise applicable requirements on site).

2. *Desirable relief may be granted without substantial detriment to the public good.*

The proposed placement of the garage along the side of the home as shown on the plan submitted with the application would leave a setback of 5.8 feet, where twenty-five (25) feet is required. Surrounding houses have existing garages, however, they do not go within such close proximity to their setbacks. Letters of support were submitted at the public hearing from surrounding neighbors to the property stating that they are in favor of the granting of the Variance, so that the applicant can construct her garage as depicted on the plans submitted with the application. The Board considers statements of support, but finds they are not conclusive as to a determination of whether the Variance is to be granted. The substantial deviation from the required setback, uncommon in this neighborhood, and the Board's finding that a garage already exists on the property, leads the Board to conclude that the grant of the Variance would constitute a substantial detriment to the public good.

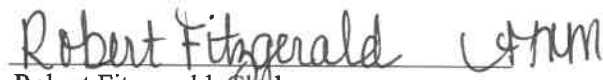
3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The intent of the Bylaw is to provide uniform regulation of buildings to establish reasonable expectations of neighbors and neighborhoods in terms of development within the neighborhood. The applicant, as previously mentioned in this decision, can by-right construct a garage on the property

in a different location. Furthermore, the applicant previously had a garage, located below the single-family home, and chose not to make use of said garage. Granting relief by a Variance would derogate from the intent and purpose of this bylaw due to the applicant failing to meet the stringent standards for granting a Variance that is required, and having created a self-imposed hardship.

APPEALS FROM THIS DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Building Inspector
Applicant

This decision was made on November 18, 2020 and filed with the Town Clerk on December 2, 2020.